

Axis Offshore Pte Ltd – Bond issue AXIS01 PRO - Equal treatment

1 Introduction

This case concerns Axis Offshore Pte Ltd's ("Axis" or the "Company") sale of own bonds with a nominal value of USD 12.3 million to its main shareholders LF Investment Aps ("LFI") and HV IV Invest Sierra Ltd ("Sierra") on 1 July 2016 (the "Shareholder Sales"). On the same date the Company and both Sierra and LFI (collectively referred to as the "Buyers") entered into Put Option Agreements in relation to the Bonds purchased through the Shareholder Sales. The Put Option Agreements granted the Buyers the right to require Axis to buy back the bonds at any time within a six-month period from the purchase date at a price equal to the prevailing market rate agreed between Axis and the Shareholders ("the Put Options"). The bonds in question are listed on Nordic ABM.

Oslo Børs has assessed whether the Shareholder Sales and Put Options represented unjustified differential treatment of bondholders and thus constituted a violation of Section 3.1.1 of the Nordic ABM Rules ("the ABM Rules"). In the event of a breach of the provisions of the ABM Rules, Nordic ABM may sanction the breach by means of public criticism, cf. Section 8.1.

Oslo Børs is of the view that the Shareholder Sales and Put Options constituted a breach of the Company's duty to treat its bondholders on an equal basis, cf. Section 3.1.1. of the ABM Rules. Oslo Børs has attached particular weight to the fact that the transactions were carried out at a point in time when the Company was aware that there were diverging interests between certain significant bondholders and the shareholders regarding a refinancing proposal. The effect of the sales was that the position of the shareholders who supported the refinancing proposal was considerably strengthened at the expense of the bondholders who opposed the refinancing proposal, whose negative controlling interest was diluted as a direct consequence of the transaction. At a bondholders' meeting held on 29 July 2016, four weeks after the Shareholder Sales, the contested refinancing proposal was passed by a small margin of votes.

The factual circumstances and the legal considerations upon which Oslo Børs has based its view are set out below.

2 The Company and the Bond Issue

Axis is a provider of high specification flotels servicing the offshore oil and gas industry. The Company is a joint venture between J. Lauritzen and HitecVision, which are represented by the two shareholders LFI (33%) and Sierra (66%) respectively. The remaining shares, about 1%, are owned by the management of Axis and are non-voting shares. The terms regulating the relationship between Sierra and LFI are set out in a shareholder agreement according to which Sierra and LFI each vote for 50% of the shares, with the Chairman of the Board not having a casting vote.

The Company has one bond issue, AXIS01 PRO (ISIN NO0010699317), listed on Nordic ABM (the "Bonds", each a "Bond"). The Bond was listed on 3 April 2014 with an outstanding nominal amount of USD 60 million. The maturity date of the Bond is 18 May 2018 (the "Maturity Date").

In December 2015 the Company cancelled a nominal USD 12 million of its holding of its own Bonds. Following this cancellation, the nominal amount of the remaining issued and outstanding Bonds in the Company's bond issue was USD 48 million.

3 Factual Background

3.1 The Refinancing Proposal

In the context of a continuing downturn in the offshore accommodation market through spring 2016 and with no new contract secured for the Company's only operating vessel, Dan Swift, following the expiration of a charter contract in July 2016, the Company came up with a proposal of refinancing its debt in order to improve its liquidity (the "Refinancing Proposal"). The Refinancing Proposal included the following elements:

- (i) New equity from the shareholders amounting to a total of USD 7.5 million, to be paid up semi-annually in four payments from November 2016 to May 2018; and
- (ii) A contribution from the bondholders in the form of substantial amendments to the Bondholder Agreement, including interest on the Bonds being paid in the form of additional Bonds ("PIK interest") starting from December 2016 and continuing up to the Maturity Date, with the payment of the PIK interest in lieu of the cash interest subject to the Company receiving new equity as set out in (i) above prior to the relevant interest payment dates; and certain financial covenants being waived.

The above-mentioned amendments to the Bondholder Agreement required two-thirds of the votes present at the bondholders' meeting to be adopted. The adoption of the Refinancing Proposal and the related amendments to the Bondholder Agreement by the bondholders' meeting were, according to the Company, likely to facilitate negotiations with senior debt lenders about certain "Proposed Senior Amendments", which included the partial deferral of the loan repayment and certain other changes to the KfW facility. The KfW facility is secured by first-priority security over the Company's key assets, i.e. its only operating vessel, Dan Swift, and a 100% guarantee from one of the main shareholders, LFI, or a company affiliated with LFI.

3.2 Contact with larger bondholders regarding the Refinancing Proposal

On 3 May the Company and its legal adviser met with Alfred Berg and Pareto Asset Management ("Pareto") to discuss the Refinancing Proposal, as they were the two largest bondholders that the Company had been able to identify. The subsequent feedback was that neither Alfred Berg nor Pareto supported the proposed amendments to the Bondholder Agreements (Pareto and Alfred Berg are collectively in the following also referred to as the "Opposing Bondholders").

3.3 The Shareholder Sales and the Put Options

On 2 July 2016, the Company disclosed in a stock exchange announcement that it had entered into agreements whereby it had sold own bonds with a nominal value of USD 12.3 million at the prevailing market price. According to the announcement, the agreements included the granting of American put options on the sold Bonds that would expire in six months. The announcement did not disclose the identity of the buyers, the number of buyers, the purchase price, or the Company's holding of own bonds following the sales. As the transaction was carried out bilaterally, it was not reported to Oslo Børs, and consequently the price of the transaction was not made known to other parties through Oslo Børs' distribution systems.

It has later been established that the Bonds were sold by Axis directly to Sierra and LFI in a private bilateral transaction with an approximate 2/3 and 1/3 distribution between the Buyers (in line with the distribution of their shareholdings) at a price of USD 60,000 per Bond, i.e. at 60% of par value.

3.4 The effect of the Shareholder Sales on the bondholder ownership structure

Following the Company's cancellation of its own Bonds in December 2015, and the resulting reduction in the nominal value of the issued and outstanding Bonds from USD 60 million to USD 48 million, the Company continued to buy back its own Bonds during the spring of 2016 up until 29 April. By this point in time the total nominal volume of own Bonds that it held had reached USD 12.3 million. As own bonds have no voting entitlement at bondholders' meetings, the total nominal value of outstanding "votable" Bonds ("Voting Bonds") after the Company's final buy-back on 29 April 2016 and prior to the Shareholder Sales on 1 July 2016 was USD 35.7 million. Following completion of the Shareholder Sale, the total nominal value of Voting Bonds was again USD 48 million.

At the time of the Shareholder Sales, the largest holders of the Company's bond issue (other than the Company) were the two shareholders Sierra and LFI and the Opposing Bondholders, Alfred Berg and Pareto.

Prior to the Shareholder sales, Sierra and LFI held Bonds with a nominal value of USD 2.6 million and USD 10 million respectively, with their combined holdings representing 35.29% of the Voting Bonds. Following the Shareholder Sale, their holdings together amounted to USD 24.9 million, 51.9% of the Voting Bonds. At the time of the Shareholder Sale, Pareto and Alfred Berg held Bonds with a nominal value of USD 9 million and USD 4.5 million respectively, with their holdings together representing 37.82% of the Voting Bonds. Following the Shareholder Sale, their combined relative holding in the Voting Bonds was diluted down to 28.12%, causing them to lose their negative controlling interest.

The table below illustrates the effect of the Shareholder Sales on the voting share held by the Shareholders and the Opposing Bondholders:

	Prior to the Shareholder Sales	After the Shareholder Sales	Oslo Børs' comments
Nominal value of Voting Bonds	USD 35.7 million	USD 48 million	Shareholder Sales USD 12.3 million
Relative holding of LFI and Sierra	35.29%	51.87%	
Relative holding of the Opposing Bondholders	37.82%	28.12%	Loss of negative controlling interest

3.5 Summons to a bondholders' meeting

On 15 July 2016, the Company issued a summons convening a bondholders' meeting on 29 July 2016 at which the amendments to the Bondholder Agreement required to implement the Refinancing Proposal would be considered. The following was included in the stock exchange announcement issued in connection with the announcement of the bondholders' meeting:

"The Issuer has been in contact with a number of its key stakeholders and has developed a Refinancing Proposal based on a balanced contribution from all main stakeholders. The Refinancing Proposal aims at creating additional liquidity headroom for the Issuer of up to USD 25 million towards Bond Maturity in May 2018 by way of new equity from shareholders, part deferral of instalments on the senior debt and Payment-In-Kind ('PIK') interest on the Bond Issue. (...) Negotiations with the senior debt lenders will commence after the Bondholders' Meeting and the adoption of the Refinancing Proposal at the Bondholders' Meeting is likely to facilitate these."

The announcement also stated that Bondholders holding in excess of 60% of the outstanding Bonds had informed Axis that they intended to vote in favour of the Refinancing Proposal.

3.6 Public dispute between Opposing Bondholders and the Company regarding the Refinancing Proposal

On 20 July 2016 Alfred Berg published a letter on Stamdata on behalf of Bondholders representing USD 13.7 million or 28.5% of the Voting Bonds (later identified as Alfred Berg and Pareto). In the letter, the Opposing Bondholders declared that they would not vote in favour of the proposed amendments presented in the summons to the bondholders' meeting as the refinancing proposal was *"unbalanced and not a committing proposal"*. The Opposing Bondholders further argued that the *"proposal is in essence a short term solution as the proposal lacks hard commitments from secured creditors and shareholders:*

- *Shareholders: the restructuring plan is constructed such that shareholders in essence have a semi-annual option to withdraw from their longer term funding commitment.*
- *Secured creditors: No condition that the KfW facility will be amended.*

The letter also states that the Opposing Bondholders disapproved of the process leading up to the summons. They argue that *"the sale of own bonds to its shareholders (..) seems to be constructed to force through the proposed amendments and in essence keep Bondholders not being bonds held by Lauritzen or Hitecvision (..) dependent of Shareholders going forward."* They requested that *"the Issuer annul the sale of the bonds to its shareholders and if liquidity is really needed, reoffer the same transaction at the same terms open to the public"*. The Opposing Bondholders also suggested that the Company *"retract the Summons and appoint Fearnley Securities as the bondholders' advisor at the Issuer's expense, and engage into a properly and mannered process with fair treatment across the capital structure based upon a substantiated analysis."*

In a letter from Axis published on Stamdata on 22 July, the Company rejected *"the assertions and speculations contained in the said letter"* and maintained that the Bonds sold in the Shareholder Sales were sold *"at the best possible price based on the factual circumstances present in the market in the common interest of the Company and the bondholders"*.

In the period between 20 July and the bondholders' meeting on 29 July, the ongoing dispute between the Opposing Bondholders, represented by Tom Hestnes from Alfred Berg, and the Company regarding the contested Refinancing Proposal, the Shareholder Sales and the Put Options, was covered in several articles in Dagens Næringsliv and Finansavisen.

Prior to the bondholders' meeting, Nordic Trustee was asked by the Opposing Bondholders to assess whether the Bonds subject to the Shareholder Sales should count as Issuer's Bonds, which would mean that they would have no voting entitlement at the bondholders' meeting. The Trustee decided, in accordance with a legal opinion provided by an external adviser on the matter, that the Shareholder Sales were genuine transactions and could not be considered pro-forma transactions carried out for the purpose of circumventing the voting restrictions on Issuer's Bonds in the Bondholder Agreement, and that consequently the Bonds would have a voting entitlement.

3.7 Transactions carried out in the period between the Shareholder Sales and the bondholders' meeting.

Between 1 January 2016 and the Shareholder Sales, a total of nine transactions in the Bond were reported to Oslo Børs with a total value of USD 11.6 million, and for the majority of this amount the Company was the buyer. The average price of the bonds traded in this period was 55%.

Between the Shareholder Sales that took place on 1 July and the bondholders' meeting on 29 July, there were seven reported trades with a total volume of USD 7.6 million.

Three of these trades, which had a total volume of USD 6.2 million and were made at a price of around 60% of par value, took place on Monday 11 July and Wednesday 13 July. On Friday 15 July the

Company issued the summons to the bondholders' meeting, according to which *“Bondholders holding in excess of 60% of the outstanding Bonds had informed Axis that they intended to vote in favor of the Refinancing Proposal.”*

The week following the Friday on which the Company issued the summons, two acquisitions were made by Alfred Berg, specifically on 20 July and 25 July for USD 0.2 million and 0.3 million respectively, at a price of 60.50% of par value.

Finally, two trades with total volumes of USD 0.5 million and USD 0.4 million were made on 27 and 28 July respectively, i.e. on the two days immediately prior to the bondholders' meeting, at a price of 85% of par value.

Immediately after the Shareholder Sale, the shareholders' holdings amounted to USD 24.9 million in aggregate, representing 51.9% of the outstanding bonds. According to the Company, the shareholders bought Bonds with a nominal value of USD 7.1 million following the Shareholder Sales and before the bondholders' meeting. This gave the Shareholders 66.67% of the votes and enabled them to enact changes to the Bondholder Agreement on their own. Against this background, it is likely that either Sierra or LFI was the buyer in the three transactions that took place in the days prior to the summons to the bondholders' meeting being issued, as well as in both the transactions that were carried out immediately prior to the bondholders' meeting, at the price of 85% of par value.

The table below summarizes all the transactions reported to Oslo Børs in the period between the Shareholder Sales and the bondholders' meeting, who the buyers are assumed to be and Oslo Børs' estimate of the increase in their holdings, based on the information provided.

Date	1 July	11–13 July	15 July	20-25 July	27-28 July	29 July
Event	Shareholder sales	Trades	Summons to bondholders' meeting	Trades	Trades	Bondholders' meeting
Volume (USD millions)	12.3	6.2		0.5	0.9	
Price*	60.0%	59.8%		59.8%	85.0%	
Buyer	Shareholders	Shareholders		Opposing Bondholders	Shareholders	
Shareholders' bondholding	51.9%	64.8%	64.8%	64.8%	66.7%	66.7%
Opposing bondholding	28.1%	28.1%	28.1%	29.2%	29.2%	29.2%

* Average price when more than one trade. Based on broker reporting to Oslo Børs.

3.8 The adoption of the Refinancing Proposal by the bondholders' meeting

The bondholders' meeting was held on 29 July 2016 and the proposed resolution regarding the Refinancing Proposal was passed by the bondholders' meeting, with 68.2% of votes cast in favour of the proposal.

4 Oslo Børs' investigation

On 20 July 2016 Oslo Børs was contacted by the Opposing Bondholders who argued that the Shareholder Sales and the Put Options represented a violation of the equal treatment rule. On 22 July 2016 Oslo Børs initiated a preliminary investigation by submitting to the Company a request for information about the consideration paid for the Bonds, the conditions for the Put Options, whether

any effort had been made to sell the USD 12.3 million block in the open market, and a description of the liquidity situation at the Company. Oslo Børs received the Company's response to its request on 27 July. Oslo Børs has since this date sent two further requests dated 29 July and 30 August asking for documents and information about the factual circumstances and the Company's assessment of the Shareholder Sales and Put Options in relation to the equal treatment rule. The Company has responded to these requests in letters dated 2 August and 12 September. A meeting between the Company's legal advisers and Oslo Børs was held on 5 September 2016 to discuss the factual circumstances and the equal treatment rule in the context of the transaction at issue. On 4 November Oslo Børs notified the Company that it might sanction it by means of public criticism, cf. Section 8.1 of the ABM Rules, at which time it also explained the grounds on which its preliminary view was based. The Company submitted its comments in response to Oslo Børs' notification on 21 November, which was within the deadline set by Oslo Børs.

On 16 September Oslo Børs contacted the Opposing Bondholders to confirm their holdings prior to the Shareholder Sales, in order to establish if there had been any changes to their holdings prior to the bondholders' meeting and to request supporting documentation. On 30 September 2016 Oslo Børs contacted the Opposing Bondholders to allow them to comment on the Company's description of the dialogue between the Opposing Bondholders and the Company prior to the Shareholder Sales.

5 Legal Background

5.1 General

The ABM Rules at Section 3.1.1 state:

- (1) *"Borrowers of bonds listed on Nordic ABM shall treat holders of their bonds on an equal basis. The borrower must not expose holders of its bonds to differential treatment that lacks a factual basis in the common interest of the borrower and the bondholders.*
- (2) *In connection with the trading or issuance of bonds or rights to such bonds, the borrower's corporate bodies, officers or senior employees must not adopt measures which may tend to give themselves, individual owners of bonds or third parties an unfair advantage at the expense of other holders or the borrower. The same applies in respect of the trading or issuance of bonds or rights to such bonds in the group to which the borrower belongs."*

The equal treatment rule is an important continuing obligation that has been included in all the various rule books applicable to issuers of shares and bonds listed on Oslo Børs, Oslo Axess, Nordic ABM and Merkur Market. It reflects the well-established principle of equal treatment of holders of securities set forth in Section 5-14 of the Securities Trading Act (the "STA"). Oslo Børs issued a circular on the equal treatment rule in 2014, Circular 2/2014, in which it addresses a number of themes related to the content and the scope of the duty that issuers have to treat investors on an equal basis. The circular was issued as part of Oslo Børs' efforts to create greater awareness in the market of the equal treatment rule and to signal that Oslo Børs was to intensify its follow up of issuers' compliance with the rule.

As set out in the Circular, the first and second paragraphs of the rule must be considered in combination, and the starting point is an assessment of whether measures have been adopted that may tend to result in differential treatment of bondholders or to confer a benefit for one or more bondholders or other parties at the expense of the borrower or of other bondholders. If this is the case, it will also be necessary to assess whether the assumptions on which the decision has been made have a factual basis, i.e. whether they have a *"factual basis in the common interest of the borrower and the bondholders"*.

The question of “*interest*” depends on the nature of the financial instruments to which the measures that are adopted relate. It is in the common interest of an issuer and its bondholders to comply with the terms and conditions of the bondholder agreement; the issuer’s ability to comply with the terms and conditions of the bonds and its reputation with regard to the treatment of its bondholders in general may influence its future capacity to raise funding in the debt capital markets. This duty under the equal treatment rule to act in accordance with the interest of the issuer and the bondholders also applies to issuers in financial distress. In Oslo Børs’ opinion this means that issuers have an obligation to respect the common interests of the bondholders when engaging in refinancing measures which may alter the terms and conditions of the bonds relative to the time when they were issued and to respect bondholders’ right to accept or reject any such alterations in accordance with the voting mechanisms set forth in the Bondholder Agreement.

Furthermore, as the equal treatment rule also extends to unreasonable advantages that benefit third parties, it means that companies are not permitted to adopt measures that are likely to confer an unreasonable advantage upon other stakeholders, including shareholders, at the expense of the bondholders. This further implies that issuers may have to pay particular attention to their duties under the equal treatment rule when facing financial difficulties, as financial distress may increase the probability of shareholders and bondholders having conflicting interests.

As set out in Circular 2/2014, the requirement for factual justification under the equal treatment rule applies more strictly when a measure is adopted that i) leads to a change in the balance of power between bondholders, ii) results in a transfer of economic value, or iii) involves differential treatment of existing bondholders. Stricter application of the criteria for there to be a factual basis in the above-mentioned situations involves evaluating more strictly the benefit that it is anticipated that the transaction will create for the company and the bondholders and also requires alternative decisions to be more rigorously evaluated.

It is the responsibility of issuers to ensure that there is sufficient evidence of the satisfactory factual basis for any given measure. A breach of the equal treatment rule set out in Section 3.1.1 of the ABM Rules may be sanctioned by means of public criticism, cf. the ABM Rules, Section 8.1.

6 The Company’s arguments

In summary the Company argued as follows:

On the Company’s financial situation and refinancing efforts:

The Transaction must be assessed in the context of Axis’ challenging financial situation and its efforts to refinance its debt in order to improve its liquidity. Its liquidity at the end of 2016, excluding any refinancing and the bond sale/put options (assuming the bond sale and the put options had a neutral effect), would be about USD 7 million if nothing was done to improve liquidity. All things equal, the company would run out of cash in early 2017, and would risk breaching the financial covenants of its KfW facility and the Bondholder Agreement.

Under its KfW facility, Axis had one instalment plus interest totalling about USD 9 million falling due in early November 2016, constituting a significant drain on liquidity at this point. In order to be refinanced effectively Axis needed to reach a solution with its debt lenders before this next instalment. Negotiations with senior debt lenders were expected to take several months, making the timeline very challenging. Negotiations with senior debt lenders were, however, put on hold in anticipation of a positive outcome of the bondholders’ meeting on 29 July 2016, which senior debt lenders had indicated would “facilitate” negotiations on senior debt deferrals.

The Company argues that the Refinancing Proposal is based on all stakeholders sharing the burden fairly, in particular the secured and unsecured creditors. The proposal is structured such that the shareholders making their contribution is a precondition for the bondholders to make their

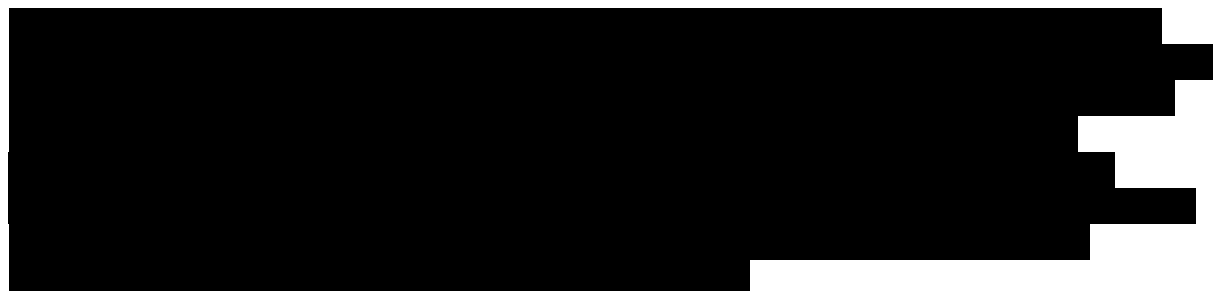
contribution, with the shareholders' contribution being more significant than the bondholders' contribution. The Bonds would have to yield 38% p.a. until maturity in May 2018 before the shareholders would receive any part of their new equity back.



On the motivation for the Shareholder Sales and the Put Options

In a letter of 27 July 2016 the Company stated that the main rationale for selling the bonds with the Put Options was as follows:

- (i) The sale and the put options enhanced its negotiating position in relation to the senior lenders regarding some specific changes to the senior financing and increased the shareholders' willingness to support the Company both in terms of liquidity and eventually equity,
- (ii) Non-completion of the changes to the bondholder agreement was negative for Axis' financial position and detrimental to the bondholders in general.
- (iii) The sale with the put options provided a hedge against falling bond market prices for the bonds
- (iv) The potential liability under the put options could be managed by Axis financially over the duration of the put period, and
- (v) In the prevailing market conditions, Axis obtained the best possible price for the block sale.



In the same letter Axis added that the Shareholder Sales were made in order to raise much needed liquidity. It further pointed out that *"keeping the Bonds was clearly not an option. This would leave the company in a financial situation which quickly would become unsustainable. With the stressed liquidity situation of the company, a large speculative exposure to the price of the Bonds would not be financially prudent."*

No differential Treatment

According to the Company, the Shareholder Sales and the Put Options did not, and were not likely to, constitute differential treatment of bondholders. Neither did they confer a benefit on the shareholders at the expense of other bondholders or Axis.

The sale of own bonds to one bondholder cannot by itself constitute differential treatment for the purposes of the provision. An offer directed at one individual bondholder does not generally provide that bondholder with any relevant advantage, as other bondholders are free to purchase bonds from other bondholders in the open market. What must be considered instead is whether the sale entailed a transfer of value from the issuer by means of a discounted price, or whether the sale entailed a change of control by allowing the purchaser to cross a voting requirement threshold.

The Shareholder Sales did not entail a transfer of value from Axis to the purchasers as the sales were made at or above the prevailing market price at the time. Based on previously reported trades in the Bond in 2016, the agreed price of 60% of par value was equivalent to or higher than the market price at the time. The acquisition of Bonds for 85.5% of par value made by one of the Shareholders subsequent to the Shareholder Sales is not comparable to the Shareholder Sales and does not reflect the market price of the Bonds; the transaction involved a small volume and was carried out in close proximity to the bondholder's meeting on 29 July 2016 at which two contested proposals were being voted on. The prospect of this portion being decisive for the outcome of the vote is likely to have driven the price upwards. The sale was made after a competitive bidding process, and, as far as Axis is aware, Alfred Berg was involved with competing bids, thereby driving the price up to 85.5%.

Similarly, the Put Options did not entail a transfer of value from Axis to the purchasers, as the purchasers paid a fair market price for the Put Options. According to the Company, both Sierra and LFI paid an option price for their Put Option. The price of the Put Options reflects the market price for such obligations, and was calculated based on a comparable transaction.

Moreover, the Shareholder Sales did not entail the purchasers' holdings of Bonds crossing the threshold for enacting amendments to the Bondholder Agreement. After the Shareholder Sales, the two purchasers only held in aggregate USD 24.9 million, which represents 51.9% of the Voting Bonds, well below the 2/3 required to enact the proposed amendments to the Bondholder Agreement. They only achieved a 2/3 majority after making several subsequent purchases with a nominal value of USD 7.1 million. The Bonds subsequently purchased were available to other bondholders as well, including Alfred Berg and Pareto.

The Put Options were relevant to LFI and Sierra as Axis' shareholders, as they would strengthen their and the Company's position in the negotiations with the senior lenders. For Axis the Put Options represent an advantage, as they strengthen the Company's negotiating position, and Axis additionally received a cash consideration at market terms for issuing the Put Options. The Put Options do not affect the bondholders, and it would not have served any purpose for the Company to offer the Put Options to bondholders other than the shareholders.

The Measures have a Factual and Defensible Basis

Even if the Shareholder Sales and/or the Put Options were found to constitute differential treatment, they have a factual and defensible basis. Axis' financial position requires action, both to improve its liquidity in the short term and to put the Company in a position to refinance its debt. The Shareholder Sales and the Put Options are necessary measures adopted by Axis to achieve this.

Axis had no viable alternatives to the Shareholder Sales and the Put Options. Based on its close monitoring of the market, the lack of trading activity, contact with the brokers that had conducted transactions in Axis' bonds, meetings with the main identifiable bondholders, the spread of the bond holdings and the limited free float in the bonds, Axis concluded that offering the own Bonds in the open market by means of a competitive auction was not a realistic option. Both Alfred Berg and Pareto had prior to the sale explicitly stated that they did not support Axis' proposed restructuring,

including for reasons that were not related to the contents of the proposal. Offering the bonds to Alfred Berg and Pareto would therefore be directly disruptive to the Company and detrimental to the objective of achieving a negotiated restructuring with all the stakeholders. The Buyers, on the other hand, had expressed a positive view of the Company's restructuring efforts, although the sale was made without any voting obligation.

Flawed application of the equal treatment rule to issuers of bonds

In its letter of 21 November the Company raised certain additional arguments related to Oslo Børs' application of the equal treatment rule to issuers of bonds. The Company argues inter alia that Oslo Børs has misapplied the provisions by applying the equal treatment principle more strictly in relation to bonds than shares, and by applying a too narrow understanding of what is in the common interest of the Company and the bondholders. More detail on and discussion of the Company's arguments in this area are provided in section 8 below in connection with Oslo Børs' assessment of the matter.

7 The Opposing Bondholders' arguments

7.1 The Shareholder Sales and the Put Options constitute a violation of the equal treatment rule

The Opposing Bondholders argue that the Company's carrying out the Shareholder Sales and its issuance of the Put Options constitute a violation of the equal treatment rule. The Opposing Bondholders are of the view that the motivation behind the Shareholder Sales was to force through amendments to the Bondholder Agreement which were not in the common interest of the bondholders by diluting the negative voting interest of the Opposing Bondholders. According to the Opposing Bondholders, the Company was informed of their negative controlling interest prior to the Shareholder Sales, meaning that, if the Company's main motivation for the Transaction was to improve liquidity, it should have known that the Opposing Bondholders would have been very willing to pay for the Bonds in order to avoid their negative controlling interest being diluted. The value of the negative controlling interest, particularly the marginal voting rights associated with such a position, is high, as can be seen from the pricing of the Bonds at 85% of par value in the transactions that were made in close proximity to the bondholders' meeting.

7.2 The Opposing Bondholders' account of their communication with the Company regarding the Refinancing Proposal

- The Opposing Bondholders had no reason to assume that Axis was not in a financially solid position at the time of the meeting on 3 May in view of its recent communication in its annual report regarding the cash resources it had available and its recent and substantial buy-back of bonds. In the view of the Opposing Bondholders, a financially distressed Company would not carry out such bond buy-backs, as this could be seen as unfair treatment of creditors.
- Market practice in restructurings would have been to present the creditors with a substantiated analysis of the Company's liquidity and financial position and documentation of the need for creditors to make a contribution. Axis had no financial advisor and could not refer to any such analysis. With regard to the recent buy-back activity, the Opposing Bondholders found it illogical to request substantial amendments to the Bondholder Agreement by reference to a need for improved liquidity given that sufficient liquidity for the next twelve months had recently been confirmed.
- Regarding the reference to Prosafe, Alfred Berg argues that in its opinion the Company's request could be seen as a possible attempt to exploit a turbulent market in order to force through changes to the bondholder agreements that would be advantageous to the

Company/other stakeholders going forward. In Alfred Berg's opinion this was what one of Axis' main shareholders was aiming to do in the restructuring of Prosafe, a process which Alfred Berg was also involved in at the time. Although Alfred Berg in this context may have mentioned that it would wait and see how this shareholder would proceed in the Prosafe case, this was clearly not the main message. The main message for the Company was for it to come back with substantiated analysis, which it never did.

- Alfred Berg also gave the feedback that until the Company could present a proper analysis substantiating the need for a contribution from the bondholders, it would only accept a redemption of the Bonds funded by the main shareholders, who were also substantial bondholders. Alfred Berg's point was that the main shareholders' buy-out of external bondholders could be adequate and in the larger context might represent a smaller investment in order to take the Company out of the capital market.
- In addition to the above account, Pareto explained that its decision on whether to support the restructuring efforts was put on hold due to other ongoing restructuring processes, and because it failed to see the urgency of getting the amendments approved in view of, inter alia, the Company's lack of progress in its negotiations with the senior debt lenders. Thus, it is not correct that Pareto left the handling of the matter to Alfred Berg. It is common procedure for bondholders with coinciding interests to coordinate their actions and feedback.
- The summons to the bondholders' meeting referred to an information meeting held on 8 June. However, the Company did not publish an invitation to this meeting on Stamdata and the Opposing Bondholders were not invited to take part in the call. The Opposing Bondholders question in critical terms the motivation for not inviting them given their significant holding and the controversy surrounding the proposed restructuring.
- Due to the Company not providing the Opposing Bondholders with sufficient information, the Opposing Bondholders nominated Fearnley Securities as their advisor (to be paid for by the Company) to assist them with evaluating the proposed potential restructuring. The Company was contacted by Fearnley Securities over the weekend 8-10 July. On Monday 11 July, the Company's shareholders started buying Bonds actively in the market and on 14 July the Company rejected the Bondholders' advisor and issued the summons to the bondholders' meeting.

8 Oslo Børs' assessment

8.1 General comments on the application of the equal treatment rule to issuers of bonds

A brief account of the duty to treat bondholders on an equal basis is provided above in section 5, which includes a general description of the content and the scope of the rule and Oslo Børs' interpretation of what is in the common interests of borrowers and bondholders. Oslo Børs' assessment of whether the Shareholder Sales and Put Options constituted a breach of the equal treatment rule is included in section 8.2 below. Prior to this, Oslo Børs addresses in section 8.1.1 some of the arguments put forward by the Company in relation to its application of the equal treatment rule to issuers of bonds in general.

8.1.1. The common interest of the bondholders

The Company has argued that Oslo Børs has misapplied the equal treatment rule, as Oslo Børs seems to apply the principle more strictly for bonds than for shares, contrary to the legislative history of the provision. The Company claims that Oslo Børs' understanding of the "common interest" of borrowers and bondholders is too narrow, as mentioned in section 5 above. While the Company agrees that it is in the common interest of a borrower and its bondholders to comply with the terms and conditions of the Bondholder Agreement, the Company is of the view that the overriding common interest must be ensuring that the issuer is able to repay the loan at the maturity date. The Company further argues that it is for a borrower's board of directors, not the bondholders or a meeting of bondholders, to decide on what steps are necessary to protect the company's financial position, and that the borrower must be able to exercise a significant degree of judgement when assessing and making decisions intended to protect its financial position and to secure its continuing existence. As long as such decisions are based on valid reasons, the balance of interests must as a clear general rule be up to the company.

Oslo Børs appreciates that issuers need to have a degree of judgement with regard to assessing the existence of commercial or financial reasons which could justify their deviating from the duty to treat all bondholders equally. It is for this reason that, when dealing with cases relating to the equal treatment rule, Oslo Børs consistently takes the approach of not seeking to re-examine companies' assessments of what constitutes a reasonable and factual basis for differential treatment, and only acts in cases where differential treatment clearly lacks a factual basis, is grossly unreasonable or has been carried out without proper consideration of the circumstances. It should be noted in this context, however, that the extent of the degree of judgement that issuers have and, equally, the threshold for Oslo Børs' to re-examine issuers' assessments will vary depending on the nature and extent of the differential treatment. As set out in Circular 2/2014, the requirement for factual justification pursuant to the equal treatment rule applies more strictly, i.e. the issuer's scope for judgement becomes smaller, when a measure is adopted that i) leads to a change in the balance of power between bondholders, ii) results in a transfer of economic value, or iii) involves differential treatment of existing bondholders.

Furthermore, it is Oslo Børs' view that the Company's arguments above disregard certain special features of the relationship between borrowers and bondholders that are not irrelevant when applying the equal treatment rule to issuers of bonds, particularly in this case where the buyers of the Bonds were also the two main shareholders in the borrower. There is an inherent risk of conflicts of interest between shareholders and bondholders when an issuer is facing financial distress and a bond is at risk of not being fully repaid. This in itself may influence the extent to which the bondholders can trust that the measures adopted by the management or the shareholder-elected board of directors take into account the interests of the bondholders to a sufficient extent. Furthermore, while financial recovery certainly is in the common interest of the borrower and the bondholders, there may be different opinions on how to achieve this and on the sacrifices that each stakeholder needs to make. It is for these reasons that Oslo Børs has emphasised the importance of respecting the voting mechanisms set out in the Bondholder Agreement and the bondholders' meeting as the right forum for making the final decision as to whether or not amendments to the Bondholder Agreement are acceptable. This is also important given that individual bondholders have by accepting the Bondholder Agreement waived their right to take action directly with the issuer and to institute legal proceedings against the issuer of their own accord.

While it is only natural for assessments about the interests of an issuer of a financial instrument and its holders to vary according to the specific features of the financial instrument in question, this does not necessarily mean that Oslo Børs' application of the equal treatment rule is stricter for bonds than for shares. Oslo Børs has on previous occasions criticized private placements made in close proximity to general meetings when such placements have had the effect of strengthening the voting position of the subscribing shareholder at the expense of other shareholders, cf. Songa Offshore SE (Decisions and statements 2014 p.55, where Oslo Børs emphasized that the transaction implied a disregard for the protection of minority shareholder rights included in the applicable company law and procedures) and, more recently, Birdstep Technology ASA (Oslo Børs' letter of 7th June 2016).

Furthermore, Oslo Børs has on two occasions sanctioned by means of fines violations of the equal treatment rule in cases where issuers have taken defensive measures in the form of private placements or acquisitions of own shares to support an existing controlling shareholder in its efforts to retain control, cf. Choice (Decisions and Statements 2003 p. 78) and Opticom (Decisions and Statements 2006 p.53). Thus, Oslo Børs does not agree with the Company's statement that it is *"widely accepted that an issuer of shares may be entitled to take extraordinary measures in extraordinary situations, such as a private placement for a 'white knight' to fend off a hostile takeover"*. The cases mentioned illustrate that measures adopted by a company's board of directors or management that affect the balance of power between shareholders, especially in situations where there is a battle for control, would rarely be acceptable under the equal treatment rule.

8.1.2 The Nordic ABM Rules and how they relate to the terms of the Bondholder Agreement and the authority of the trustee

The Company has further argued that Oslo Børs overstepped its authority by, in reality, re-examining the decisions made by the Bond Trustee and the regulations in the Bondholder Agreement, thereby undermining the authority of the Bond Trustee and the Bondholder Agreement. The Company refers to the assessment made by the Bond Trustee according to which the Bonds acquired in the Shareholder Sales could not be considered as Issuer's Bonds, cf. section 3.6 above, and to Clause 12 of the Bondholder Agreement, which allows the Issuer to sell own Bonds. The Company points out that the rights and obligations of the bondholders and the issuer in the bond market are regulated in detail by the Bondholder Agreement and supervised by the Bond Trustee. Consequently, there is little need and little room for developing additional rights and obligations outside the scope of the Bondholder Agreement.

The STA sets out general rules of conduct, information requirements and provisions on equal treatment which apply to financial instruments in general, including bonds. The Stock Exchange Act stipulates that a regulated market shall have rules for the admission of bonds to listing and shall ensure that issuers that are admitted to listing comply with their obligations pursuant to Chapters 5 and 7 of the STA. The main purpose of the STA, the Stock Exchange Act and Oslo Børs' issuer rules is to lay the basis for secure, orderly and efficient markets. Nordic ABM is not a regulated market and hence falls outside the scope of the STA and the Stock Exchange Act. However, in order to safeguard the quality and efficiency of this market place, the continuing obligations in the ABM rules are largely the same as those that apply to issuers with bonds listed on Oslo Børs.

The equal treatment rule is reflected in all the various rule books applicable to issuers with transferable securities listed on Oslo Børs' market places. Issuers with securities listed on regulated markets are also subject to this obligation due to Section 5-14 of the STA. Equal treatment is considered a fundamental principle in Norwegian securities legislation in that it provides protection

for minority interests. Effective protection for minority interests plays a central role in facilitating efficient and trustworthy markets for securities trading.

When an issuer of bonds applies for listing it also agrees to comply with the market place's rules and regulations. These rules apply independently of whether such regulations are covered by a bondholder agreement. A bondholder agreement is a private agreement between a borrower and its bondholders, and its content is beyond Oslo Børs' control. It is not correct to state that Oslo Børs approves bondholder agreements or templates for such agreements. Oslo Børs does in connection with the listing process review whether the financial instruments are eligible for trading and whether there are circumstances that may impede the issuer's ability to comply with applicable rules and regulations. Consequently, if the Bondholder Agreement in question had contained provisions which prevented Oslo Børs from enforcing the equal treatment rule set forth in section 3.1.1. of the ABM Rules, the Bond would not have been accepted for listing. Accordingly, while a bondholder agreement may regulate whether a borrower is allowed to trade in own bonds, such trading will have to take place in compliance with the equal treatment rule.

Finally, Oslo Børs cannot see how its assessment of whether the Shareholder Sales constituted a breach of the equal treatment rule undermines the assessment made by Nordic Trustee of whether or not the Bonds sold in the Shareholder Sales had a voting entitlement, as the basis for these assessments is not the same. The issue requiring assessment in relation to the equal treatment rule is not whether the Shareholders Sales represent pro-forma transactions such that the Bonds that were sold have to be considered as "Issuer's Bonds" according to the Bondholder Agreement. The issue is rather whether the Company's decision to conduct the Shareholder Sales and to issue the Put Options constituted differential treatment of bondholders and, if this is the case, whether such differential treatment of bondholders had a factual basis in the common interest of the Company and the bondholders. The rationale for selling the Bonds and for issuing the Put Options to the Shareholders, and for not offering such Bonds to other bondholders, constitutes part of this assessment.

8.2 Did the Shareholder Sales and the Put Options constitute differential treatment of the bondholders?

The Company has argued that a sale of own bonds to one bondholder cannot in itself constitute differential treatment for the purpose of the provision. An offer directed at one individual bondholder does not generally provide that bondholder with any relevant advantage, as other bondholders are free to purchase bonds from other bondholders in the open market. Instead, what must be considered is whether the sale entailed a transfer of value from the issuer by way of a discounted price or whether the sale entailed a change of control by allowing the purchaser to cross a voting requirement threshold. The Company argues that the Shareholder Sales did not transfer value from Axis to the purchasers as the sale was made at or above the prevailing market price at the time. Moreover, the Shareholder Sales did not entail the purchasers' holdings of Bonds crossing the threshold for enacting amendments to the Bondholder Agreement.

In Oslo Børs' opinion, assessing whether an issuer's sale of own bonds to selected bondholders constitutes differential treatment in the context of the equal treatment rule cannot be narrowed down to whether the sale was made at a price equal to other transactions at the time or entailed a change of control by allowing the purchaser to cross a voting requirement threshold. The question is more complex and, furthermore, depends on several other factors, including, inter alia, the volume of own bonds sold, the bonds' liquidity and distribution (i.e. the amount of bonds available in the open market and how they are dispersed among bondholders), and whether the sale entails a change in the balance of power as a consequence of its dilutive effect.

The size of the transaction, i.e. the nominal amount of own bonds sold, as well as the bonds' liquidity and distribution are all factors that are likely to affect other bondholders' ability to acquire on equal terms in the open market the amount of bonds they require to avoid dilution. Other circumstances, such as a battle for control or voting interests in relation to a contested proposal as in the case under discussion, are also likely to influence this ability, as they can potentially drive up the price of bonds.

In the context of bonds, a lack of transparency with regard to ownership, controlling positions and, on occasions, price also affects the ability of bondholders to evaluate the effect of an issuer's sale of own bonds and consequently whether they can reverse any disadvantageous effect on equal terms. In the present case, for example, other bondholders were not informed of the identity or number of buyers, nor of the price of the own bonds sold. Uncertainty relating to the distribution of ownership may also make it more difficult for an issuer to assess the effect of selling own bonds and the extent that doing so will alter the balance of power. In Oslo Børs' view, these features of the bond market mean issuers need to pay increased attention to the potential effect of any sale on existing bondholders.

A dilution of voting interests resulting from an issuer selling own bonds represents a disadvantage for the minority bondholder or bondholder(s) concerned. The extent to which a minority bondholder will be able to reverse such a disadvantage by making acquisitions on equal terms in the open market will depend on the factors and circumstances described above. It is worth noting that it is the circumstances as they exist at the time that a given measure is decided upon that are relevant in the context of the equal treatment rule, c.f. Section 3.1.1 second paragraph, which states that issuers cannot adopt measures likely to confer on individual bondholders or third parties an unfair advantage at the expense of other bondholders.

The Shareholder Sales

The nominal value of the Bonds in the Shareholder Sales represented approximately 25% of the total outstanding volume of the bond issue at the time.

As it had been buying back its own Bonds over a sustained period of time, the Company had closely followed the market for its Bond and had been in regular contact with the main identifiable bondholders and brokers. On the basis of its observations, Axis was of the understanding that there was a limited "free float" in the Bond (i.e. the number of bonds held by parties other than Axis, the shareholders or entities related to the shareholders, and bondholders unrelated to Axis that did not have an interest in buying or selling). According to an estimate provided by the Company, the composition of Bonds not held by Axis, the Shareholders, Pareto, Alfred Berg or bondholders without an interest in buying or selling prior to the Shareholder Sales, was a total of USD 6.9 million and was likely to be held by smaller investors. The Bonds were also illiquid. According to the Company, the reported market activity in 2016 until the Shareholder Sales, excluding transactions in which Axis was involved, comprised a nominal volume of only USD 3.3 million and took place on four reported transaction dates.

According to Alfred Berg, the Company/its advisors were provided with information about the Opposing Bondholders' minority blocking position prior to the Shareholder Sales. The Opposing Bondholders appear not to have had any particular motivation or interest in keeping their positions confidential, and moreover disclosed their holdings to the press following the Shareholder Sales and also in the public letter dated 20 July. Nevertheless, the Company has maintained that it was not aware that Alfred Berg and Pareto held a one-third blocking minority prior to the Shareholder Sales.

Irrespective of whether Axis should have known about the minority blocking position of Alfred Berg and Pareto prior to the Shareholder Sales, it must have been clear to the Company that the direct

effect of the sale would be that the position of the shareholders/bondholders who supported the refinancing proposal would be considerably stronger due to a substantial increase in their voting interest, and that this would be at the expense of other bondholders, including those who opposed the proposal, who would have their voting rights diluted.

The composition of the ownership structure of the Bond, its limited free float and its illiquidity indicated that it would not necessarily be possible for holders to reverse the dilution of voting interests caused by the Shareholder Sales through acquisitions of Bonds in the open market on the same terms. The lack of transparency about the buyers and the price of the Shareholder Sales made it more difficult for other bondholders to immediately assess the effect of the transaction. Furthermore, the existence of diverging interests between the Company's bondholders could potentially lead to a battle for control between the Buyers on the one hand and the Opposing Bondholders on the other, which would drive up the price of the limited amount of bonds for sale in the market.

The Company has argued that the fact that Alfred Berg's response to the refinancing proposal presented to it in early May included a request for the Bonds to be redeemed at 85% of par value indicated that the Opposing Bondholders had no interest in buying at the time of the Shareholder Sales. However, a party's interest in buying or selling will depend on the circumstances. In Oslo Børs' view, it appears unreasonable to derive from the above-mentioned request that the Opposing Bondholders would not be interested in buying bonds if such an acquisition would be necessary to prevent a dilution to their voting rights, particularly considering the circumstances at the time, which included an impending bondholders' meeting at which a contested refinancing proposal was to be voted on.

Based on the above, it is Oslo Børs' opinion that, considering the amount of the issuer's own Bonds sold, the illiquid market for the Bonds at the time and the Company's knowledge about the existing diverging interests between various bondholders, the Shareholder Sales constituted differential treatment pursuant to the equal treatment rule.

The Put Options

The Company has argued that the Put Options did not constitute differential treatment of bondholders as they did not affect the other bondholders, and that it would not have served the Company's interest to offer Put Options to bondholders other than the shareholders. According to the Company, the Put Options were only relevant to the shareholders as they would strengthen their and the Company's position in the negotiations with the senior lenders.

At the same time, the Company has pointed out that the Shareholder Sales and the Put Options were not pro-forma transactions and were made on arm's length market terms. Axis has further stated that it *"can honour the Put Options even if the market price of the Bonds in the meantime increase to 100"*, and that *"it intends to keep the proceeds received from the USD 12.3 million sale readily available during the option period and does not foresee any need to utilise the proceeds in the period"*. Oslo Børs has received a copy of the Put Options agreement. There is nothing in the terms and conditions of the Put Options that restricts or makes conditional the right to exercise the Put Options as the Buyers deem appropriate.

Based on the above, Oslo Børs has no reason to assume the Put Options issued in connection with the sale could not be exercised as set forth in the Put Options Agreements, and consequently they did have a value to the purchasing bondholders since they reduced the purchasers' risk of being locked in with a significant number of Bonds in an illiquid market. Thus, it is the opinion of Oslo Børs that the Put Options linked to the Shareholder Sales made the differential treatment that the sales represented more substantial.

8.3 To what extent does the differential treatment of bondholders that the Shareholder Sales and Put Options represented have a factual basis in the common interest of the Company and the bondholders?

According to Axis in a letter to Oslo Børs dated 27 July, the main reasons for selling the Bonds with the Put Options to its main shareholders included the following:

- *“The sale and the put options enhanced the negotiation position in relation to the senior lenders in certain changes to the senior financing and increased the shareholders’ willingness to support the Company both by way of liquidity and eventually equity,*
- *Non-completion of the changes to the bond agreement was negative for Axis’ financial position and detrimental to bondholders in general.”*

Axis has in a letter dated 12 September further emphasised that the Shareholder Sales were carried out in order to raise much needed liquidity.

The Company has submitted to Oslo Børs an email dated 2 May (the day prior to the meeting with Alfred Berg) that includes an overview of the identity and expected holdings of each known bondholder. The overview also includes a detailed account of how many bonds the two shareholders will have to buy to increase their holdings to 66.7 % assuming i) Axis keeps its own holdings (and cannot vote) or ii) the shareholders buy Axis’ holding.

In an email dated 27 May sent by the Company’s CFO, it is stated that Alfred Berg is expected to vote against the refinancing proposal and that there is a risk that it might attempt to gather a blocking minority. It is pointed out that the main outstanding point is the PIK interest. The email also states that the Company nevertheless has asked its legal adviser to draft the summons and the proposed amendments to the Bondholder Agreement, with on or around 20th June set as the target date for the bondholders’ meeting.

The minutes from a meeting of the Board of Directors on 1 July 2016 contain the following description of the dialogue with bondholders regarding the Restructuring Proposal: *“The dialogue with the key bondholders is continuing. Few however display any detailed interest. Current plan includes a bondholders’ meeting in mid-July with a prior second information meeting.”*

The above is followed by item 4 *“Sale of Own Bonds and Option Agreement”*, under which it is stated that: *“The Company had discussed with the shareholders the possibility to receive further support. HH referred to the annexed extract of the resolutions for further details and JKR motivated the resolutions as being in the best interest of the Company.”*

The attached extract from the resolutions regarding the Shareholder Sales and the Put Option contains the following statement *“Background: The Company has over a certain period of time acquired bonds issued by the Company (“Own Bonds”). The acquisitions had been done at market price and with the intention of reducing the overall leverage and net interest bearing debt of the Company. The Company has not engaged in or mandated to trading in its own bonds. However, due to changed circumstances and the Company’s financial position, the Company is now considering selling of the Own Bonds on arm’s length market terms to LFI Investment ApS and HV VI Invest Sierra Limited instead of cancellation of the Own Bonds. Additionally, the Company will enter into an option agreement with the said buyers on arm’s length terms.”*

As the above makes clear, the original intention behind the substantive buy-backs up until 29 April was to cancel the Company's own Bonds. Other than the reference to the "*changed circumstances and the Company's financial position*", there is no further explanation of the reason for the change of strategy with regard to these Bonds.

Oslo Børs finds it difficult to see how the Shareholder Sales can have been motivated primarily by a pressing need to raise liquidity given that the Company granted Put Options that could be exercised at any time within six months from the date of the Sale and that the Company, according to its own statements, did not foresee any need to utilise the proceeds in the period between the Shareholder Sales and the expiration of the Put Options.

The Company has further argued that the Shareholder Sales and Put Options enhanced its negotiating position in relation to its senior lenders with regard to certain changes to the KfW financing. Oslo Børs finds that while this may have been the reason provided by the Shareholders for their request for the Put Options as a condition for purchasing the Bonds, this can in itself hardly explain the Company's decision to sell the Bonds to the Buyers in the first place.

According to the second bullet point in the Company's account, one of the main reasons for conducting the transaction was "*that non-completion of the changes to the bond agreement was negative for Axis's financial position and detrimental to bondholders in general*".

Based on the above, including the documentation from the time, Oslo Børs finds it likely that the Shareholder Sales and the Put Options were mainly motivated by the prospect of achieving sufficient support for the refinancing proposal at the upcoming bondholders' meeting. Even if this were not the case, the reason for not aiming the sale at a larger number of bondholders and thereby eliminating or reducing the extent of the differential treatment, was, from Oslo Børs' perspective, clearly that the Company was unwilling to sell bonds to bondholders who did not support the refinancing solution. According to the Company "*Offering the bonds (..) to Alfred Berg and Pareto would (..) be directly disruptive to the Company and detrimental to the objective of achieving a negotiated restructuring with all the stakeholders. The buyers, on the other hand, had expressed a positive view on the Company's restructuring efforts, although the sale was made without any voting obligation.*"

Taking the above into consideration, the question that needs to be addressed is whether the Company's motivation of strengthening the position of those bondholders who had been positive regarding the Refinancing Proposal at the expense of the Opposing Bondholders, or its treating the Opposing Bondholders differently based on their reluctance about the proposal, can be considered to have a factual basis in the common interest of Axis and its bondholders in general. In this context, it should be noted that the differential treatment had a significant negative effect on the Opposing Bondholders due to the dilution of their negative controlling interest.

The refinancing proposal involved contributions from shareholders on the one hand and from bondholders on the other. It was inter alia contested whether the proposal was sufficiently balanced in terms of the contributions and sacrifices that would have to be made by the bondholders compared to those that would have to be made by the shareholders, and in terms of the extent to which the proposal had sufficient basis in a substantiated analysis of the need for improved liquidity.

In general, conflicts of interest between shareholders and creditors are not uncommon, particularly when there is a risk of default. In such situations, bondholders' interests in general and individually are supposed to be protected by the terms and conditions of the bondholder agreement and by the fact that these terms and conditions can only be subsequently altered at a bondholders' meeting by a qualified majority. Accordingly, and considering the inherent risk of different stakeholders having

conflicting interests in situations where a company is facing financial distress, it is the bondholders' meeting rather than the Company that is to judge whether changes to the Bondholder Agreement are in the interest of the bondholders. It is thus the opinion of Oslo Børs that the intention of influencing the voting at the bondholders' meeting in connection with a contested proposal by strengthening the position of the buyers or deliberately weakening the position of opposing bondholders does not meet the equal treatment rule's requirement for there to be factual justification.

The Company has referred to Alfred Berg as a hostile bondholder who unreasonably refused to even consider a proposal for the required refinancing of the Company. The Company argues that while this Opposing Bondholder may also have had genuine concerns about the refinancing proposal, the Company's reasonable understanding based on Alfred Berg's feedback at the time was that Alfred Berg's position was not linked to Axis' situation, but to the restructuring of another Company (i.e. Prosafe), over which Axis had no influence. Consequently, it was Axis' reading of the situation at the time that Alfred Berg (and by extension Pareto) acted against the common interest of Axis and the bondholder community.

As a general point, Oslo Børs agrees that the purpose of the equal treatment rule is not to protect minority bondholders so that they can block proposals for no reason or for reasons unrelated to the proposal or the issuer's situation. However, based on the information provided, Oslo Børs has no reason to doubt that the Opposing Bondholders' resistance to the proposal was founded on genuine concerns about its content and timing, as further elaborated in their letter published on Stamdata on 20 July and in the information provided to Oslo Børs referred to in section 3.6 above. That these concerns had also been communicated to the Company prior to the Shareholder Sales seems evident from email correspondence dated 27 May in which it is stated that the key point for a potential blocking of the proposal by the Opposing Bondholders is the PIK interest, and that the Company can presumably get the Opposing Bondholders to vote for the other suggested amendments to the terms.

Oslo Børs would assume that a natural consequence of any such disagreement with regard to material elements of the refinancing proposal would have been for proper dialogue with the bondholders to continue and for further documentation and explanations to be provided regarding the contested amendments to the terms of the Bond if so requested, in order for misunderstandings regarding the proposal and the bondholders' positions to be cleared up. Nevertheless, as the above-mentioned email correspondence makes clear, the Company instead decided to continue with the proposal and to prepare the summons and the amendments to the bondholder agreement. The Shareholder Sales were conducted three days later, with these followed by the summons being issued, and this seemingly without any further prior attempts by the Company to continue the dialogue with the Opposing Bondholders.

As stated in section 8.2 above, the Put Options linked to the Shareholder Sales made the differential treatment more substantial. The Company has explained that the main rationale for entering into the Put Option Agreements was to enhance its negotiating position in relation to senior lenders in regard to specific changes to the senior financing. However, in Oslo Børs' view, enhancing the Company or the Shareholders' negotiating position in relation to another creditor can hardly be seen as a factual basis for putting aside bondholders' interests.

9 Conclusion

After thorough evaluation, Oslo Børs is of the opinion that the Shareholder Sales and the Put Options constituted differential treatment that lacks a factual basis in the common interest of the Company and the bondholders. Consequently, it is Oslo Børs' view that Axis Offshore Pte. Ltd has violated

Section 3.1.1 of the ABM Rules. Oslo Børs is furthermore of the opinion that such breach is to be sanctioned by means of public criticism, cf. Section 8.1 of the ABM Rules.

Oslo Børs therefore passed the following resolution on 8 December 2016:

“The Company has violated the requirement to treat holders of bonds on an equal basis pursuant to Section 3.1.1 of the ABM rules, and Oslo Børs has decided to sanction this violation by means of public criticism, cf. Section 8.1 (1) of the ABM Rules.”